BLOGS

Notes on Article 356 of Indian Constitution

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Introduction

The Indian Constitution, in its role as a protector of democratic ideals, includes provisions to address instances in which a state fails to adhere to constitutional provisions or encounters issues of misgovernance.

Article 356 of the Indian Constitution provides the authority to impose a state of emergency, commonly known as the President's Rule, with the aim of safeguarding the integrity of the constitutional structure.

The objective of this article is to explore the notion of a state emergency as outlined in **Article 356**, examining its provisions, consequences, and the essential measures required to safeguard the democratic structure of the country.

Provisions pertaining to a State Emergency under Article 356

I. Article 356

1. When a state disregards constitutional provisions or experiences instances of poor governance, the President has the power under Article 356 to declare a state emergency. In such a situation the President can :

- Assume some or all functions of the State Government and the powers of the Governor or any other authority, except the state legislature.
- By virtue of this declaration, Parliament shall exercise its authority over or in conjunction with the State Legislature.
- In order to effectively implement the objectives of the proclamation, it is imperative to establish appropriate measures, which may involve the temporary suspension of specific provisions within the Constitution pertaining to state entities or governing bodies.

Nevertheless, it is important to note that the President is not authorized to assume the powers of a High Court or to suspend provisions pertaining to High Courts.

The President possesses the authority to proclaim a state of emergency, either upon receiving a report from the Governor or upon obtaining other evidence suggesting a constitutional breakdown.

II. The Governor's Report

The **Governor, acting as the President's representative** at the state level, presents a comprehensive report elucidating the circumstances that precipitated the deterioration of constitutional mechanisms within the state.

The report issued by the Governor forms the basis upon which the President makes the determination to declare a state of emergency.

Ramifications of a State Emergency per Article 356

Extent of control exerted by the Central Government

1. Upon the declaration of a state emergency, the central government assumes direct authority over the administration of the impacted state.
2. The Governor, in their capacity as the President's delegate, wields executive power, resulting in the subordination of the state government to the central government.

Position of the State Legislative Assembly

1. During a state emergency, it is possible for the state legislative assembly to be suspended or dissolved.
2. The legislative authority of the state is vested in the Parliament, which empowers it to enact laws and establish regulations for the governance of the state.

The Dissolution of State Government

In situations where a state of emergency necessitates the dissolution of the state government, the responsibility of governing the state falls upon the Governor until new elections are held.

The Central Government exerts a substantial degree of influence over the operational aspects of the state's administrative apparatus.

The suspension of Fundamental Rights

In times of state emergency, there can be a temporary curtailment of fundamental rights in order to facilitate the restoration of constitutional machinery.

In order to maintain law and order and restore normalcy, it is permissible to impose limitations on fundamental rights pertaining to freedom of speech, assembly, movement, and other related aspects.

Procedure for Implementation and Revocation of a proclamation under Article 356

- The revocation or modification of a proclamation can be carried out by the President through the issuance of another proclamation.
- Each proclamation issued in accordance with this article, will automatically expire after a period of two months unless it has been duly approved by resolutions passed by both Houses of Parliament.
- In the event that the House of the People (Lower House) undergoes dissolution within this two-month timeframe, the proclamation will no longer be in effect thirty days after the House of the People convenes following its reestablishment, unless the House of the People passes a resolution endorsing the proclamation within said thirty-day period.

- Once a proclamation has been approved, it maintains its legal validity for a period of six months, commencing from the date of its issuance.
- Nevertheless, in the event that both Houses of Parliament adopt a resolution endorsing the perpetuation of the proclamation, it shall remain effective for an additional duration of six months. The maximum duration for which a proclamation can remain in effect is three years.
- In the event that the House of the People is dissolved at any point during a six-month period and fails to pass a resolution to extend the proclamation within thirty days of its reestablishment, the proclamation will no longer be in effect.
- The passing of a resolution to extend the duration of a proclamation beyond one year from its original issue date is not permissible by either House of Parliament unless (44th amendment) :

1. The implementation of a state of emergency occurs in India or in a specific region within the state upon the passing of a resolution.
2. This proclamation is deemed necessary by the Election Commission, as it certifies the challenges faced in conducting general elections within the respective state.

Measures Implemented to Prevent Misuse and Uphold Democratic Principles

A. Judicial Review

1. Judicial review is a legal doctrine that grants the judiciary the power to review and potentially invalidate actions taken by the executive and legislative branches of government.
2. The authority of judicial review remains unimpaired in the context of a state emergency.
3. Both individuals and political parties have the ability to resort to legal means by approaching the courts in order to contest the imposition of a state of emergency and seek remedies if their rights are infringed upon.

B. Parliamentary Approval

1. As mentioned above, the approval of both Houses of Parliament is required within a designated timeframe for the imposition of a state emergency.

2. Parliamentary oversight plays a crucial role in ensuring that the decision to impose an emergency is subjected to thorough scrutiny, thereby preventing its arbitrary utilization.

C. Duration of State Emergency

1. The utilization of Article 356 to declare a state emergency is not designed to serve as a long-term solution.
2. The Constitution as discussed previously establishes a temporal constraint on the duration of the emergency, guaranteeing its termination upon the attainment of stability within the given circumstances.

Critique and the Imperative of Accountability

A. The potential for misuse

1. The utilization of a state emergency as outlined in Article 356 has garnered criticism due to its perceived susceptibility to abuse by the governing authority as a means to stifle political opposition and erode principles of federalism.
2. Enforcement of a state of emergency for too long has the potential to result in the consolidation of authority and the erosion of democratic institutions.

B. Maintaining Democratic Values

1. Maintaining a delicate equilibrium between preserving constitutional integrity and adhering to democratic principles is of utmost importance when implementing a state of emergency.
2. In order to safeguard democratic principles, it is imperative to establish transparency, accountability, and regular evaluation of the emergency situation.

Landmark Judgements on Proclamation of Emergency

In **SR Bommai versus the Union of India (1994)**, the Court ruled that the imposition of the president's rule in a state is open to scrutiny by the judiciary, as outlined in Article 142. Additionally, the court provided guidelines to safeguard against the potential abuse of this authority.

The court further determined that secularism is an inherent characteristic of the constitution, and in the event that any state government contravenes this principle, the imposition of the president's rule may be warranted.

In **Rameshwar Prasad versus the Union of India**, the Supreme Court determined that the declaration of a state emergency in Bihar was deemed unconstitutional due to its reliance on extraneous and irrelevant factors.

The Supreme Court ruled that the Governor had provided misleading information to the central government when recommending the dissolution of the assembly. It was expected that the Union Council of Ministers would have thoroughly examined the recommendation before accepting it as an unquestionable fact.

Conclusion

The Indian Constitution incorporates Article 356 as a means to effectively address instances wherein a state fails to adhere to constitutional provisions or encounters misgovernance. The grant of extraordinary powers to the central government through a state emergency under

Article 356 necessitates the imperative of upholding democratic values and principles. The inclusion of constitutional safeguards, such as judicial review and parliamentary oversight, plays a pivotal role in establishing checks and balances that effectively deter the improper utilization of a state emergency and uphold the democratic framework of the country.

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